IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9546 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SUNIL ALIAS SUNIL MALIYO ALIASSHANKERSAN SHAHU

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9546 of 2004

MS KRISHNA U MISHRA for Petitioner No. 1

MS HB PUNANI, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 07/12/2004

ORAL JUDGEMENT

1. Heard ld. counsel Ms. KU Mishra for the

petitioner detenu. By this petition under Article 226 read with Articles 21 & 22(5) of the Constitution of India, the petitioner detenu has challenged the legality and validity of the order of detention dated 24.05.2004 passed by the Police Commissioner, Surat City in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) against the petitioner-detenu. The petitioner detenu has been branded as "boot-legger" as defined under Sec.2(b) of the PASA Act.

2. The grounds for detention supplied to the detenu petitioner indicate that the petitioner was found involved in solitary single offence punishable under Sections 66B, 65AE, 81 of the Bombay Prohibition Act being DCB Police Station III CR No. 5006/2004, wherein 1973 bottles of liquor worth Rs.62,690/ was recovered. It is recorded by the authority that the petitioner is a "boot-legger" and is involved in the activities dangerous to the society.

3. The petitioner has challenged the legality and validity of the order of detention on number of grounds as mentioned in the memo of the petition. Ld. counsel Ms. Mishra for the petitioner, has taken this Court through the contentions raised in the petition. However, she has focussed his arguments mainly on three grounds. The first ground pressed into service by ld. counsel Ms. Mishra is that the petitioner has been wrongly branded as "bootlegger" and his activities are dangerous to maintenance of public order, as he was involved in solitary offence under Bombay Prohibition Act. The second ground pressed into service is that as per the settled legal position of the decision of the Apex Court in the case of Sohanlal Surajram Visnoi v/s State of Gujarat & Ors., 2004(2) GLR 1051, the impugned order of detention requires to be quashed as the case the present case is squarely covered by the ratio of the aforesaid decision.

5. I have gone through the above-cited decision. For the sake of convenience, I would like to quote relevant paras 4 & 5 of the said decision:-

> "4. Article 22(3) of the Constitution of India expressly provides that the safeguards contained in Art.22(1) and 22(2) of the Constitution are not to apply to preventive detention. Article 22(4) of the Constitution provides and opens with double negative, put in positive form, and in its real substance, means

that a law which provides for preventive detention for a period longer than three months, shall contain all the provisions prescribed in clauses (4) and (5) of Article 22 of the Constitution. Article 22(5) of the Constitution prescribes that when any person under a preventive detention law is detained, the authority making the order, shall as soon as may be, communicate to such person, the grounds on which the order has been made, and shall afford him with the earliest opportunity of making a representation against the order. Article 22(5) of the Constitution is of general importance and operation in respect of every detention order made under any preventive detention law.

5. In this group of petitions, all the detenus, except one in Special Civil Application No.825 of 2003, are treated and described as "bootleggers" as defined under Sec.2(b) of the P.A.S.A. Act and only one offence is registered against each detenu under the provisions of the Bombay Prohibition Act, 1949. Whereas in Special Civil Application No.825/2003, the detenu is treated as "dangerous person" as defined in Sec.2(c) of the P.A.S.A. Act, and in this case also, a solitary incident is made basis for passing the detention order against him."

6. The next ground pressed into service by ld. counsel Ms. Mishra for the petitioner detenu is that the subjective satisfaction of the detaining authority has been recorded mechanically. The Sponsoring authority has not cared to record the statements of the witnesses till 10.05.2004 and 11.05.2004. According to her, those statements have been recorded mechanically only with a view to make recommendations to pass the order of detention. She has pressed into service the ground of delay in passing the order of detention and that too on un-explained delay. The last case registered against the petitioner is on 04.01.2004 and the order of detention is passed on 24.05.2004. Thus, there is a delay of about 4 months and 20 days. Even the petitioner was not arrested in connection with the aforesaid offence till 02.05.2004. From the date of his arrest also, there is a delay of about 22 days in passing the order of detention. This delay ought to have been explained reasonably by the other side by furnishing details. It is also pertinent to note that no other record other than the papers of chargesheet of the registered case were placed before the detaining authority. It was also possible for the

sponsoring authority to place relevant papers before the detaining authority at the earliest if really preventive measures were required tobe taken immediately. The Court is satisfied with that there is no explanation much less reasonable explanation for not passing the order of detention in couple of hours or days after receipt of the papers from sponsoring machinery. Though affidavit-in-reply tendered today which is taken on record, is filed, there is no satisfactory explanation as to the delay caused. Unexplained delay of about 4 months 22 days by the detaining authority vitiates the order of detention and it is rightly argued that it is violative of Articles 21 and 22(5) of the Constitution of India, as per settled legal position. So, this ground alone, coupled with other grounds pressed into service as aforesaid, the petition requires to be allowed.

7. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 24.05.2004 passed by the Police Commissioner, Surat City is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

[C. K.BUCH, J]

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